

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 685 of 2002 (M/S)

State of Uttaranchal,
Through Executive Engineer, P.W.D. Haridwar.

Versus.

Dharmpal S/o Sri Sobha Ram

Approved for reporting.

~~Not approved for reporting~~

Date of decision 5.8.2004.

Initial of Judge

IN HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 685 of 2002 (M/S)

State of Uttaranchal,
Through Executive Engineer,
Provincial Division, Public Works Department,
Haridwar.

.....Petitioner

Versus

Dharmpal S/o Sri Sobha Ram,
C/o Sri Harishakar Johri,
A-50-Sivalik Nagar,
B.H.E.L., Haridwar & another.

.....Respondents

Standing Counsel for the State.
Mr. Pankaj Miglani, learned counsel for respondent No. 1.

Dated: 05.8.2004

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioner have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the award dated 31.7.2001 passed by respondent no. 2 i.e. the presiding Officer, Labour Court Dehradun.

FACTS:

Brief facts giving rise to the present writ petition are that respondent no. 1 was appointed on 14.4.1985 as 'Beldar /Chaukidar' in the Public Works Department and he continued up to 11.1.1987, but on 12.1.1987, he was falsely implicated in proceedings by the respondents and on 28.10.1977, he was exonerated by the Court. But inspite of this, he was not taken back in service by the Department. According to the respondent No. 1 this act of the Department is in violation of the provisions contained under Section- 6 N of the Industrial Disputes Act 1947 as he had completed more than 240 days of service.

Therefore, the respondent no. 1 raised the dispute under section 4-K of the U.P. Industrial Disputes Act, 1947. Following matter was referred to the presiding Officer, Labour Court, Dehradun:

“क्या सेवायोजकों द्वारा अपने कर्मचारी श्री धर्मपाल पुत्र श्री शोभाराम बेलदार/चौकीदार की सेवायें दिनांक 12.1.87 से समाप्त किया जाना उचित एवं वैधानिक हैं यदि नहीं, तो संबंधित कर्मचारी क्या हितलाभ पाने का अधिकारी है, तथा अन्य किस विवरण सहित”

The Labour Court after hearing both the parties held that the termination order passed by the petitioner- department is illegal and therefore, directed the petitioner to reinstate respondent No. 1, however because of delay in filing the claim petition, the Labour Court moulded the relief and awarded Rs. 60,000/- as compensation towards back wages and Rs. 2000/- was awarded towards costs to the respondent No. 1.

Being aggrieved by this judgment of the Labour Court, petitioner has preferred the present writ petition.

I have heard learned counsel for both the parties and perused the record.

After hearing both the parties, following points arise for determination:

- i. Whether the presumption drawn by the Labour Court with regard to the completion of 240 days can be said to be Illegal”
- ii. Whether the claim petition having been filed after a lapse of a Period of 13 years, can be rejected as highly belated?

Findings on Point no.i

The petitioner has stated that respondent No. 1 has not completed 240 days in whole calendar year and the learned Labour

Court has very casually presumed that the respondent No. 1 has completed 240 days.

So far as completion of 240 days is concerned, there is sufficient material on the record that inspite of the opportunity given to the employer, he did not produce any evidence to show that the respondent No. 1 has not completed 240 days. Besides, this it is also admitted by the petitioner-department that the respondent No. 1 was employed in the year 1985 and he worked upto the year 1987 as is clear from the finding of the Labour Court. Therefore, it is rightly presumed by the Labour Court that the respondent No. 1 has completed 240 days.

Finding on Point No.ii:

Learned counsel for the petitioner has further argued that the claim petition has been filed after a period of 13 years and as such, the same is not maintainable as it is highly belated.

In this regard, the Labour Court has recorded a finding to the following effect:-

“जहाँ तक पिछली अवधि के वेतन का प्रश्न है विवाद उठाने में हुए विलंब के लिए दोनों पक्ष ही – सेवायोजक पक्ष अधिक दोषी है। यह सही है कि जमानत पर छूटने के बाद जब सेवायोजक पक्ष ने वादी श्रमिक को सेवा में वापस नहीं लिया तो वह उसी समय विवाद उठा सकता था। ऐसा न करने का कारण वादी श्रमिक ने यह बताया है कि सेवायोजकों ने कहा था कि न्यायालय से दोषमुक्त होने पर ही उसे सेवा में रखना संभव होगा। अतः जहाँ तक एक ओर पिछली चौदह साल की लम्बी अवधि के पूर्ण वेतन का भार सेवायोजकों पर डालना उचित नहीं दिखता, वहीं दूसरी ओर वादी श्रमिक को कुछ मुआवजा दिला जाना भी न्यायोचित व आवश्यक है। मा० उच्चतम न्यायालय द्वारा बलबीर सिंह बनाम पंजाब रोडवेज में दि० 8.12.2000 के निर्णय में अजायबसिंह बनाम सरहिन्द कोआपरेटिव मार्केटिंग सोसायटी के केस में दिए गए अपने पूर्व निर्णय को और स्पष्ट करते हुए कहा है कि केवल विलंब के कारण श्रमिक के अधिकार समाप्त नहीं हो जाते हैं परन्तु यह न्यायालय

के विवके पर है कि मामले के तथ्यों व परिस्थितियों को देखते हुए विलंब के कारण श्रमिक को देय हितलाभों को उपयुक्त परिमार्जन कर दे। (एफ0एल0आर0 2001(89) 35).”

In *Sapan Kumar Pandit Vs. U.P. State Electricity board & others* reported in 2001 SC-SLR 658, the Apex Court has held as under:

“It is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provisions i.e. Section 4-K of the U.P. Act. In M/s Western India Watch Co. Ltd. Vs the Western India Watch Co. Workers Union, AIR 1970 SC 1205, learned Judges made the following observations:

Therefore, the expression ‘at any time’, though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can ‘at any time’, i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression ‘at any time’ thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression ‘at any time’ in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence.”

In view of this, the Labour Court has rightly moulded the relief to the extent of Rs. 60,000/- towards compensation in lieu of the back wages to the respondent No. 1 on account of the delay in filing the claim petition and Rs. 2,000/- towards the costs. No interference is required under Article 226 of the Constitution of India.

Conclusions:

The workman has set up his case that he was continuously working from 14-4-1985 to 11-1-1987 with the employer and during this period, he has completed 240 days of working in preceding 12 months and that the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 has not been complied with by the employer and therefore, termination order is wholly illegal.

In view of the finding recorded above, I do not find any infirmity in the order passed by the Presiding Officer, Labour Court. The findings recorded by the Labour Court are findings of fact and this court, therefore in exercise of powers under Article 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

Accordingly, writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

Dt. 5.8.2004

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